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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,052	03/24/2005	Eric K. C. Lee	62816A	1773
109 7590 03/14/2008 The Dow Chemical Company Intellectual Property Section P.O. Box 1967 Midland, MI 48641-1967				
EXAMINER WOOD, ELLEN S				
ART UNIT		PAPER NUMBER		
1794				
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03/14/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/529,052

Applicant(s)

LEE ET AL.

Examiner

ELLEN S. WOOD

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/86)
Paper No(s)/Mail Date 06/22/2005
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 9-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claims 9-11 provides for the use of claim 9 wherein the film is suitable for contact with food, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 9-11 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Objections

4. Claims 13-26 are objected to under 37 CFR 1.75(c) as being in improper form because multiple dependent cannot depend upon any other multiple dependent claims.

See MPEP § 608.01(n). Accordingly, the claims cannot depend from any other multiple dependent claims and has not been further treated on the merits.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-9, 12-18, 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Hoshino et al. (EP0029316, hereinafter "Hoshino").

In regards to claims 1 and 3, Hoshino discloses a resin composition comprising a vinylidene chloride interpolpolymer (polyvinylidene chloride) and a copolymer of a monomer having at least one carboxyl group (alpha olefin and an alkyl ester of an unsaturated carboxylic acid), a film prepared from the resin, and a food package comprising a food packed within the film (pg. 1 lines 1-5). The resin composition is to improve the adhesiveness of films to meats (abstract). The vinylidene chloride interpolpolymer is composed of vinylidene chloride and vinyl chloride (pg. 6 lines 14-19). The copolymer is produced by copolymerizing a monomer having at least one carboxyl group with an alkyl methacrylate (pg. 4 lines 23-26).

In regards to claim 2, Hoshino discloses a process of preparing a packaging film from a resin composition that comprises a copolymer of an alkyl methacrylate and a

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monomer which is copolymerizable with the alkyl methacrylate and which has at least one carboxyl group into a vinylidene chloride copolymer (pg. 3 lines 24-30).

In regards to claims 4-6, Hoshino discloses that the film prepared from the resin discloses is used for packing food products such as meat products. The composition is to improve the adhesiveness of films to meats (abstract). The meat is filled into a tube-like film made of the resin composition, thus the film is in contact with the meat (pg. 7 lines 4-9).

In regards to claim 7, Hoshino discloses a package that is used for the packaging of meats, where the resin composition includes a vinylidene chloride interpolymer and a copolymer of an alpha olefin and an alkyl ester of an unsaturated carboxylic acid (pg. 3 lines 1-12).

In regards to claim 8, Hoshino discloses a tube-like film is made of the resin composition that is later discloses as a tubular casing (pg. 7 lines 4-9).

In regards to claims 12-13, Hoshino discloses that the films of the present invention for packing food products such as meat are a monolayer film (pg. 7 lines 4-9).

In regards to claim 14, Hoshino discloses that the copolymer that comprises a methacrylic acid or acrylic acid and an alkyl group such as ethylene (pg. 5 lines 12-14).

In regards to claim 15, Hoshino discloses that the copolymer comprises ethylene and at least one C₁ to C₈ alkyl ester of acrylic acid (pg. 5 lines 18-21).

In regards to claim 16, Hoshino discloses that the copolymer comprises ethylene and methyl ester of acrylic acid (pg. 5 lines 24-26).

In regards to claim 17-18, Hoshino discloses that the copolymer comprises 1 to 50 weight percent of the monomer which is an alkyl ester of unsaturated carboxylic acid (pg. 3 lines 5-9).

In regards to claim 21, Hoshino discloses that the vinylidene chloride interpolymer comprises not less than 60 weight percent of vinylidene chloride units and not more than 40 weight percent vinyl chloride (pg. 6 lines 14-20).

In regards to claim 22-24, Hoshino discloses that the copolymer content is from 0.01 to 5 weight percent of the resin composition (pg. 3 lines 9-13).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 19-20 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoshino et al. (EP0029316, hereinafter "Hoshino").

Hoshino discloses the packing film formed from vinylidene chloride copolymer resin composition as discussed previously. Hoshino is silent with regards to the melt index of the copolymer and the thickness of the film.

Hoshino discloses that the copolymer that comprises a methacrylic acid or acrylic acid and an alkyl group such as ethylene. The copolymer comprises ethylene and at least one C₁ to C₈ alkyl ester of acrylic acid. The copolymer comprises ethylene and

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methyl ester of acrylic acid. The copolymer comprises 1 to 50 weight percent of the monomer which is an alkyl ester of unsaturated carboxylic acid. These are all limitations set forth by the instant applicant in claims 14-18. Thus, it would be obvious to one of ordinary skill at the time of the invention that the copolymers used in Hoshino would have a melt index as claimed by the instant applicant with the motivation that the copolymers used in Hoshino are very similar to those used by the instant applicant. It is known to one of ordinary skill in the art that it is not inventive to discover workable ranges by routine experimentation *In re Aller*.

Hoshino discloses that the thickness of the film is usually around 2×10^{-5} to 10^{-4} micron (pg. 7 lines 33-35). The film is prepared by extruding, in which case the heads of the extruders can vary in size and shape. Thus, it would be obvious to one of ordinary skill in the art to change the extruder head to the desired thickness of the instant applicant depending on the use of the film.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELLEN S. WOOD whose telephone number is (571)270-3450. The examiner can normally be reached on Monday-Friday 7-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ellen S Wood
Examiner
Art Unit 1794

/Carol Chaney/

Supervisory Patent Examiner, Art Unit 1794